

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/25/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-090220

FILED: _____

PALO MESA APARTMENTS

ANDREW M HULL

v.

ANGELA EDMUND

RICHARD N GROVES

MESA JUSTICE CT-WEST
REMAND DESK-SE

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the receipt of Appellant's reply memorandum on May 3, 2002. This Court has considered the record consisting of all pleadings filed with the West Mesa Justice Court and the Memoranda submitted by counsel. Appellee, Palo Mesa Apartments, filed a Forcible Detainer case in the West Mesa Justice Court. The matter was scheduled for September 25, 2001 and both parties appeared in open court. It appears from the court's file a trial occurred at the conclusion of which judgment was granted to Appellee, Palo Mesa Apartments. The judgment was signed September 25, 2001. Thereafter, Appellant filed a Motion to Set Aside Judgment on December 10, 2001 (greater than 60 days from the date of judgment). Appellant challenged the sufficiency of the service of process claiming lack of personal jurisdiction over her. The trial court denied the motion to Set Aside the Judgment, but modified

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the judgment striking all monetary awards. The trial court issued its order January 7, 2002. On January 11, 2002 Appellant filed a Notice of Appeal. The issue appealed concerns the trial court's denial of Appellant's Motion to Set Aside Judgment.

No record was made of the justice court's proceeding. Both parties have the opportunity and right to request that a record be prepared of these proceedings, both have failed to so request. The parties arguments concerning their version of the facts to the contrary, this Court must presume that the missing record supports the trial court's action in denying the Motion to Set Aside the Judgment.¹

The record clearly reflects from the judgment of September 25, 2001, that Appellant appeared in person and participated in the trial. From this the trial court could have concluded that Appellant made a voluntary appearance and has waived the issue of service of process and personal jurisdiction by her voluntary appearance.

Appellee requests that this court uphold the judgment (though Appellee characterizes it as "jurisdiction" in its memorandum) of the West Mesa Court, but asks that the case be remanded for entry of a judgment for money. This Court notes that Appellee has failed to file a cross-appeal in this case. Requests such as those made by Appellee are, therefore, precluded inasmuch as Appellee has failed to file a timely Notice of Cross-Appeal.

Counsel for both parties have requested that this Court award attorney's fees and costs on appeal. Good cause not appearing in the request,

IT IS ORDERED denying the request for attorney's fees and costs.

¹ See Baker v. Baker, 183 Ariz. 70, 900 P.2d 764 (1995); State v. Mendoza, 181 Ariz. 472, 891 P.2d 939 (1995); State v. Zuck, 134 Ariz. 509, 658 P.2d 162 (1982); In re: Mustonen's Estate 130 Ariz. 283, 635 P.2d 876 (App. 1981).

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This Court finds no error in the trial court's order denying Appellant's Motion to Set Aside Judgment of September 25, 2001.

IT IS THEREFORE ORDERED affirming the trial court's judgment and its order denying Appellant's Motion to Set Aside Judgment.

IT IS FURTHER ORDERED remanding this case back to the West Mesa Justice Court for all further and future proceedings in this case.